

Harry A Schroeder  
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608-782-3993

December 22, 2003

FAX Message to 608-264-9200

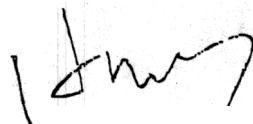
Attn: Toni Herkert  
Shoreland Management Team Leader  
WDNR

Dear Toni Herkert,

You may recall our conversation in Onalaska on December 1 regarding the inclusion of language in the new NR115 addressing back lot development, or pyramiding, which would give those counties that choose to limit such development some regulatory basis for doing so and therefore discourage challenges to any such restrictions. Sawyer County on December 18 adopted revised Shoreland Ordinances after nearly four years of development. I will attach that portion of the new ordinance addressing Lake Access for your reference.

Now, another issue has come up in Sawyer County that deserves attention and language in the new NR115. Some counties, including Sawyer, do not recognize the opinion of the Wisconsin Attorney General and agreed to by Attorney Linda Meyer of your department, a copy of which is attached. NR115 could be a very effective way of communicating this opinion to all counties and their Zoning Committees. Please consider these proposals seriously. If an appearance before the advisory committee by authoritative persons would be useful, I'm sure that could be arranged.

Sincerely,



**State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES**

Jim Doyle, Governor  
Scott Hassett, Secretary

101 S. Webster St.  
Box 7921  
Madison, Wisconsin 53707-7921  
Telephone 608-266-2821  
FAX 608-267-3579  
TTY 608-267-6897

June 18, 2003

Thomas Harnisch Law Office  
500 W. 5th Street  
P.O. Box 65  
Neillsville, WI 54456-0065

Subject: 66 OAG 1 (1977)

Dear Mr. Harnisch:

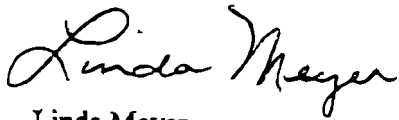
You have asked for a letter from me summarizing my understanding of the Wisconsin Department of Natural Resources' interpretation of an opinion of the Attorney General that was issued on January 10, 1977, dealing with the question of whether a lot may extend across navigable waters. The Attorney General was asked several questions relating to the calculation of land area for the purpose of applying sec. 236.02 (8), Stats., and indicated in the 1977 opinion that, for the purposes of sec. 236.02 (8), Stats., a lot cannot consist of separate parcels that are separated from each other by a body of navigable water.

It is my understanding that the Wisconsin Department of Natural Resources has always taken the position that, although the opinion found at 66 OAG 1 deals specifically with the application of the subdivision requirements in ch. 236, Stats., counties should not be allowing a new lot in the shoreland area to be created that would consist of two or more parcels separated from each other by a navigable body of water, and should not include the area occupied by the bed of a navigable body of water that borders a lot in calculating the area of the lot for the purpose of determining whether a proposed lot meets minimum lot size requirements found in the county's shoreland zoning ordinance.

The Wisconsin Department of Natural Resources has also taken the position that the minimum lot size requirements in ch. NR 115, Wis. Adm. Code, must be applied to the creation of all proposed parcels of land that are to be used as building sites, even if they are proposed to be owned as condominium units. This means that counties must apply the minimum lot size requirements to determine the number of individually owned units that may be allowed in all condominium housing developments that are proposed within the shoreland area. For

example, in an unsewered area, twelve condo units of at least 20,000 sq. ft. each could be created on a 6 acre parcel, since an acre is equal to 43, 560 sq. ft. (I assume that at least some of the 6-acre parcel will be used for a road; otherwise, as many as thirteen units would fit within a 6-acre parcel). It is my opinion that if a navigable body of water runs through a property that is proposed to be developed into condominiums, the area occupied by the bed of the navigable body of water should not be included in calculating the total area of the condominium plat, for the purpose of determining how many condominium units may be created on the property within the shoreland area.

Sincerely,



Linda Meyer  
Staff Attorney  
Bureau of Legal Services

cc: Tom Steidl - LS/5  
Marcia Penner - LS/5  
Carmen Wagner - WT/2

**Section 4.412 LAKE ACCESS****Create a new Section 4.412 LAKE ACCESS****4.412 LAKE ACCESS**

1) All private lake accesses; lake access easements; or outlots; deeded or contractual accesses for the purpose of lake access shall meet the following requirements. Lake access parcels that were in the same ownership as of June 15, 1995 and remain in the same ownership, even though substandard in size, do not have to comply with this section. Such lake access parcels shall be restricted to lake access for only a single family lot, a single building site, a single family unit, a single family condominium unit or any other single area of a condominium designated as a unit. Campsites/RV sites

located on a backlot are prohibited from utilizing said access. Same ownership means that both a lake access parcel and its backlot must have the same owner. A lake access parcel and its backlot may be transferred to a different owner. However, should the lake access parcel and its backlot be separated (i.e., different owners) the provisions of this section shall apply.

2) The access to a navigable waterway for backlot or off shore development shall meet the minimum lot and parcel size requirements of the Lake Class Development Standards. The lot width shall be measured at right angles at all points along its side lot lines and the minimum required lot area shall exclude any wetlands. A cleared strip, ten (10) feet wide to contain the path that allows access to the lake through the lake access corridor (see Lake Class Development Standards), is the only clearing that is allowed.

3) The number of single family lots, building sites, mobile home park sites, single family units and single family condominium units or other areas of a condominium designated as units utilizing said access shall be limited to three (3). — 2 or 3

CAMPGROUND/RV sites located on a backlot are prohibited from utilizing said access.

4) A "Gard Gazebo" shall be the only building (structure) allowed on the lake access parcel. An area on the landward side of the SHORELINE VEGETATION PROTECTION AREA, not to exceed 500 square feet, may be cleared for the location of this structure.

5) No utilities shall be allowed on the lake access parcel (gas, electricity, water or phone).

6) The creation or use of land for a lake access shall be by conditional use only in the RR-1 and RR-2 zone districts in accordance with Section 8.0. The Zoning Committee shall consider the size, shape depth, present and potential use of the lake and the effect of the private access on public rights in navigable waters.

7) Once created, a lake access parcel can never be built upon, unless its use as a lake access parcel is removed by a conditional use permit.

10) MAJOR RECREATIONAL EQUIPMENT/VEHICLES (i.e., camping equipment) shall not be placed on the parcel.

## Wagner, Carmen (DNR)

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**From:** L. Patrick Showalter [imabear58@hotmail.com]

**Sent:** Friday, December 12, 2003 12:04 PM

**To:** Herkert, Toni

**Subject:** Waukesha meeting

Toni,

Just a quick note to thank and congratulate you and your panel for the excellent work you have put in on NR 115.

The meeting was informative and interesting. In all, I agree with your "a" choices. I wanted to ask if your group gave any thought to providing either an incentive or a deadline for current frontage owners to create buffers, even without mitigation triggers. I suspect that would create a firestorm of controversy, but if it's a good idea to do this, it's good for everyone.

Good luck with the legislature.

Pat Showalter

Pat & Dianne Showalter

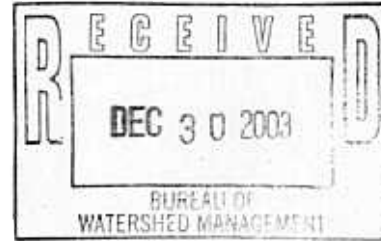
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December 26, 2003

Ms. TONI HERKERT  
SHORELAND MGT TEAM LEADER/WT-2  
P.O. BOX 7921  
MADISON, WI 53707



Dear Ms. Kerkert,

Proposals/Revisions to WI ADM. Code NR 115 (Shoreland Management)

Please be informed that I was in attendance at your Listening Session on December 1, 2003 at Onalaska, WI and have reviewed the hand-out literature thoroughly as well as NR 115 & NR 116...I am the retired WI CONSERVATION OFFICER in Trempealeau County where I've been for the past 35 years; along the MISSISSIPPI RIVER.

I've made lots of observations of Shoreland Management and worked with many Water/Shoreland Management people. As I understand it, the goals or objective of the D.N.R. was/is to: (1) Preserve water quantity for fish & wildlife as well as habitat. (2) To provide a safe & healthful condition for water recreational activities. (3) To preserve the shore or shoreline with vegetative growth for habitat and erosion protection.

I've also been very involved with Floodplain Management programs and have observed that in most areas Shorelands are Floodplains here along the Mississippi River. While Floodplain regulations are more applicable to private properties they do not supercede Shoreland regulations according to chapter 30. of the WI Statutes or WI Adm. Code N.R. 115. Occasionally, the shoreland is covered by water making it a floodplain three to four weeks out of a year and then dry for 11 months or more making it a shoreland area...

When we review the proposal or objectives of N.R. 116. none of them state: TO ELIMINATE PRIVATE PROPERTY OR PEOPLE RESIDING IN A FLOODPLAIN AREA; However, that is the "Backdoor Approach." by the D.N.R.

There has been cause for lots of confusion in the administration of the FLOODPLAIN & SHORELAND MANAGEMENT PROGRAM. Interpretations vary among individuals and Counties or D.N.R. representatives. People who own property and live along the Mississippi River don't fear a flood or even a REGIONAL FLOOD; We know well in advance if there is going to be a flood or not. Generally, the U.S. Corps. of Engineers with the Locks & Dams on the River can predict the flood elevation to within a couple inches and well in advance of rising water. \*\*\*We don't fear floods, We fear the D.N.R. or the County Zoning people. It shouldn't be that way, but, it is\*\*\*

While at the Onalaska listening session you addressed BOATHOUSES and questioned do we even need them? We have lots of floating boathouses on the Mississippi River. As you know they are being eliminated. They are an encroachment of public water for private use. We can have docks or piers or a BOAT SHELTER (WI Stat. 30.01 (1c) which can't be larger than 14 x 24 ft. and not visually intrusive. A Boat Shelter is without sides or doors and there isn't any weather protection or Winter storage. The invasion of the Zebra Mussel has made it almost impossible to moor a boat on the Mississippi River for more than a couple weeks.

Do We need Boathouses? You bet we do! We need DRY BOATHOUSES Those that are exempt from the 75 foot setback requirement---Those that can't be constructed below the ordinary high water mark, We need DRY BOATHOUSES as defined in the WI STATUTES 30.01 and permitted by WI STATUTES 30.121(3m) Also, as defined by N.R. 115.03 (1) and most County Zoning Shoreland Ordinance regulations...

We also need to define and establish an ORDINARY HIGH WATER MARK (OHWM) on the Mississippi River, or better yet, TOTALLY ELIMINATE IT and use 'NORMAL SUMMER POOL ELEVATIONS' used by the Corps. of Engineers which is well surveyed and documented for each Pool. On the Mississippi River the Locks & Dams offer protection from Spring flooding and most of the DEVELOPED AREAS (cabins/cottages) are located immediately downstream of each Lock & Dam...

Do We need (VAC) Viewing Access Corridors? or Shoreland Buffers? on the Mississippi River? I don't think so, not since we've got TOW BOATS and CRUISERS, BASSBOATS and JET SKIES, FLOOD and ICE FLOWS, WEST WINDS and RAIN STORMS all of which has caused the loss of shorelines and vegetation. What We need is RIP-RAP and lots of it... The NATURAL SCENIC BEAUTY along this part of the Mississippi River is gone forever...

Our Government has filled the Mississippi River with thousands of tons of ROCK, RIP-RAP and CONCRETE making it a COMMERCIAL NAVIGATION CHANNEL and it will continue; bank & shoreline stabilization is essential where the soil is mostly sand.

It is unfortunate that when the RIVER BOTTOMS were condemned and private people had to sell and move out that all of the property wasn't condemned including the shorelands/floodplains. It truly would have prevented what we have now---THE BACKDOOR APPROACH as I see it. How many hundreds of years will NONCONFORMING STRUCTURES last?

A review of N.R. 115. LISTENING SESSION TOTAL PACKAGE listing proposals, goals and objectives is very confusing and will add to the NON-CONSISTENCY in application and administration of Shoreland Rules and Regulations. As a SHORELAND PROPERTY OWNER I believe We have demonstrated during the last 40 years those activities that should be eliminated and those that should prevail...

This attachment is intended as a respond or reply to your Item XV OTHER ISSUES of the Listening Session Package. and may I request that it be included as a part of XVI FOR THE PUBLIC RECORD...

Respectfully Submitted,

  
John M. Sieger

Conservation Warden (ret'd)  
W23329 Lake Road  
Trempealeau, WI 54661

**Wagner, Carmen (DNR)**

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**From:** Karen Sinclair [kmsinclair@new.rr.com]  
**Sent:** Wednesday, December 03, 2003 7:49 PM  
**To:** "Toni.Herkert@dnr.state.wi.us"@ms-smtp-03.rdc-kc.rr.com

**Subject:** shoreland regulations

Hello Toni, I have been a property owner on Bass Lake in Oconto County, Town of Doty for 13 years. During that time, our family has done our best to keep our shoreline intact and to treat our land next to the water with care.

Not many years after we bought that property, another owner on the lake completely removed all the natural vegetation on his land, put up a Legend Lake-style retaining wall, removed all the trees and natural vegetation, and put in a lawn. The DNR did not make him put it back the way it was.

My point in relating this story is that you can design all the rules and regulations that you want, but unless the DNR is given the power to force owners to fix illegal shoreline development, the independent, self-righteous owners will continue to do as they please. Our neighbor did not get a permit. He just did it. As far as I know, the DNR never did a thing about this illegal shoreline.

Best of luck to you and your committee in designing new regulations. We need them. People simply do not realize that they love their lakes to death.

I would have attended the session in Grand Chute, but I was unable to come due to prior commitments. Thanks for providing this opportunity to be heard.

Sincerely,

Karen Sinclair

824 S. Fidelis St.

Appleton, WI 54915

03/22/2004

## Wagner, Carmen (DNR)

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**From:** The Sloans [thediggins@centurytel.net]  
**Sent:** Thursday, November 06, 2003 1:41 PM  
**To:** Herkert, Toni  
**Subject:** Hearing

Re:NR115

Will be unable to personally attend your hearing in Spooner Nov. 11th.  
Please consider my comments.

As a native of Northern Wisconsin for over 70 years I have witnessed continued declining water quality. With 12 years experience as a County Board Supervisor and 11 and 1/2 years as Wascott Town Chairman I feel any relaxation of regulations will be a big mistake.

This is the time to encourage more strict regulations in regard to revisions to NR115.

..  
Loren Sloan  
14691 S. Sloan Rd.  
Gordon, Wi. 54838

Email address. thediggins@centurytel.net

**Wagner, Carmen (DNR)**

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**From:** Kim Strand [kim.strand@comcast.net]  
**Sent:** Wednesday, November 26, 2003 8:13 PM  
**To:** Herkert, Toni  
**Subject:** NR115 Comment

As an owner of lakeshore property (a small old resort) in Wisconsin I would like to see the less restrictive options put into place (OPTION B). Although we need guidelines and rules to help keep our enviroment 'managed', we should allow the most liberal rules.

Thank you,

Kim Strand